

FIRST REGULAR SESSION

# HOUSE BILL NO. 374

## 96TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES BARNES (Sponsor), KELLY (24), RICHARDSON,  
JONES (117) AND DIEHL (Co-sponsors).

1146L.011

D. ADAM CRUMBLISS, Chief Clerk

---

### AN ACT

To amend chapter 208, RSMo, by adding thereto five new sections relating to the Missouri false claims act.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 208, RSMo, is amended by adding thereto five new sections, to be known as sections 208.380, 208.382, 208.384, 208.386, and 208.388, to read as follows:

**208.380. As used in sections 208.380 to 208.388, the following terms mean:**

(1) "Claim", any request or demand for money, property, or services made to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from or was provided by the state, or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;

(2) "Employer", any natural person, corporation, firm, association, organization, partnership, business, trust, or state-affiliated entity involved in a nongovernmental function, including state universities and state hospitals;

(3) "Knowing" and "knowingly", that a person, with respect to information:

(a) Has actual knowledge of the information;

(b) Acts in deliberate ignorance of the truth or falsity of the information; or

(c) Acts in reckless disregard of the truth or falsity of the information.

**Proof of specific intent to defraud is not required;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (4) "Person", any natural person, corporation, firm, association, organization,  
18 partnership, business, or trust.

208.382. 1. Any person who commits any of the following acts shall be liable to the  
2 state for three times the amount of damages which the state sustains because of the act of  
3 that person. A person who commits any of the following acts shall also be liable to the state  
4 for the costs of a civil action brought to recover any of those penalties or damages, and  
5 shall be liable to the state for a civil penalty of not less than five thousand dollars and not  
6 more than ten thousand dollars for each violation:

7 (1) Knowingly presents or causes to be presented to any employee, officer, or agent  
8 of the state, or to any contractor, grantee, or other recipient of state funds, a false or  
9 fraudulent claim for payment or approval;

10 (2) Knowingly makes, uses, or causes to be made or used a false record or statement  
11 to get a false or fraudulent claim paid or approved;

12 (3) Conspires to defraud the state by getting a false claim allowed or paid, or  
13 conspires to defraud the state by knowingly making, using, or causing to be made or used,  
14 a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit  
15 money or property to the state;

16 (4) Has possession, custody, or control of public property or money used or to be  
17 used by the state and knowingly delivers or causes to be delivered less property than the  
18 amount for which the person receives a certificate or receipt;

19 (5) Is authorized to make or deliver a document certifying receipt of property used  
20 or to be used by the state and knowingly makes or delivers a receipt that falsely represents  
21 the property used or to be used;

22 (6) Knowingly buys or receives as a pledge of an obligation or debt, public property  
23 from any person who lawfully may not sell or pledge the property;

24 (7) Knowingly makes, uses, or causes to be made or used a false record or statement  
25 to conceal, avoid, or decrease an obligation to pay or transmit money or property to the  
26 state;

27 (8) Is a beneficiary of an inadvertent submission of a false claim to any employee,  
28 officer, or agent of the state, or to any contractor, grantee, or other recipient of state funds,  
29 subsequently discovers the falsity of the claim and fails to disclose the false claim to the  
30 state within a reasonable time after discovery of the false claim.

31 2. Notwithstanding the provisions of subsection 1 of this section, the court may  
32 assess not less than two times the amount of damages which the state sustains because of  
33 the act of the person described in subsection 1 of this section, and no civil penalty, if the  
34 court finds all of the following:

35 (1) The person committing the violation furnished officials of the state who are  
36 responsible for investigating false claims violations with all information known to such  
37 person about the violation within thirty days after the date on which the person first  
38 obtained the information;

39 (2) The person fully cooperated with any investigation by the state;

40 (3) At the time the person furnished the state with information about the violation,  
41 no criminal prosecution, civil action, or administrative action had commenced with respect  
42 to the violation, and the person did not have actual knowledge of the existence of an  
43 investigation into the violation.

44 3. This section does not apply to claims, records, or statements made under the state  
45 revenue and taxation code.

208.384. 1. The state attorney general diligently shall investigate a violation under  
2 section 208.382. If the attorney general finds that a person has violated or is violating  
3 section 208.382, the attorney general may bring a civil action under this section against  
4 such person.

5 2. (1) A person may bring a civil action for a violation of sections 208.380 to  
6 208.388 for the person and for the state in the name of the state. The person bringing the  
7 action shall be referred to as the *qui tam* plaintiff. Once filed, the action may be dismissed  
8 only with the written consent of the court, taking into account the best interest of the  
9 parties involved and the public purposes behind sections 208.380 to 208.388.

10 (2) A copy of the complaint and written disclosure of substantially all material  
11 evidence and information the person possesses shall be served on the state attorney general.  
12 The complaint shall also be filed in camera, shall remain under seal for at least sixty days,  
13 and shall not be served on the defendant until the court so orders. The state may elect to  
14 intervene and proceed with the action within sixty days after it receives both the complaint  
15 and the material evidence and the information.

16 (3) The state may, for good cause shown, move the court for extensions of the time  
17 during which the complaint remains under seal under subdivision (2) of this subsection.  
18 Any such motions may be supported by affidavits or other submissions in camera. The  
19 defendant shall not be required to respond to any complaint filed under this section until  
20 after the complaint is unsealed and served upon the defendant under state rules of civil  
21 procedure.

22 (4) Before the expiration of the sixty-day period or any extensions obtained under  
23 subdivision (3) of this subsection, the state shall:

24 (a) Proceed with the action, in which case the action shall be conducted by the state;  
25 or

26 (b) Notify the court that it declines to take over the action, in which case the person  
27 bringing the action shall have the right to conduct the action.

28 (5) When a person brings a valid action under this subsection, no person other than  
29 the state may intervene or bring a related action based on the facts underlying the pending  
30 action.

31 3. (1) If the state proceeds with the action, it shall have the primary responsibility  
32 for prosecuting the action and shall not be bound by an act of the person bringing the  
33 action. Such person shall have the right to continue as a party to the action, subject to the  
34 limitations set forth in subdivision (2) of this subsection.

35 (2) (a) The state may seek to dismiss the action for good cause notwithstanding the  
36 objections of the *qui tam* plaintiff if the *qui tam* plaintiff has been notified by the state of  
37 the filing of the motion and the court has provided the *qui tam* plaintiff with an  
38 opportunity to oppose the motion and present evidence at a hearing.

39 (b) The state may settle the action with the defendant notwithstanding the  
40 objections of the *qui tam* plaintiff if the court determines, after a hearing providing the *qui*  
41 *tam* plaintiff an opportunity to present evidence, that the proposed settlement is fair,  
42 adequate, and reasonable under all of the circumstances.

43 (c) Upon a showing by the state that unrestricted participation during the course  
44 of the litigation by the person initiating the action would interfere with or unduly delay the  
45 state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of  
46 harassment, the court may, in its discretion, impose limitations on the person's  
47 participation, such as:

- 48 a. Limiting the number of witnesses the person may call;
- 49 b. Limiting the length of the testimony of such witnesses;
- 50 c. Limiting the person's cross examination of witnesses; or
- 51 d. Otherwise limiting the participation by the person in the litigation.

52 (d) Upon a showing by the defendant that unrestricted participation during the  
53 course of the litigation by the person initiating the action would be for purposes of  
54 harassment or would cause the defendant undue burden or unnecessary expense, the court  
55 may limit the participation by the person in the litigation.

56 (3) If the state elects not to proceed with the action, the person who initiated the  
57 action shall have the right to conduct the action. If the state so requests, it shall be served  
58 with copies of all pleadings filed in the action and shall be supplied with copies of all  
59 deposition transcripts at the state's expense. When a person proceeds with the action, the  
60 court, without limiting the status and rights of the person initiating the action, may  
61 nevertheless permit the state to intervene at a later date upon a showing of good cause.

62           (4) Whether or not the state proceeds with the action, upon a showing by the state  
63 that certain actions of discovery by the person initiating the action would interfere with the  
64 state's investigation or prosecution of a criminal or civil matter arising out of the same  
65 facts, the court may stay such discovery for a period of not more than sixty days. Such a  
66 showing shall be conducted in camera. The court may extend the sixty-day period upon  
67 a further showing in camera that the state has pursued the criminal or civil investigation  
68 or proceedings with reasonable diligence and any proposed discovery in the civil action will  
69 interfere with the ongoing criminal or civil investigation or proceedings.

70           (5) Notwithstanding the provisions of subsection 2 of this section, the state may  
71 elect to pursue its claim through any alternate remedy available to the state, including any  
72 administrative proceeding to determine a civil monetary penalty. If any such alternate  
73 remedy is pursued in another proceeding, the person initiating the action shall have the  
74 same rights in such proceeding as such person would have had if the action had continued  
75 under this section. Any finding of fact or conclusion of law made in such other proceeding  
76 that has become final shall be conclusive on all parties to an action under this section. For  
77 purposes of the preceding sentence, a finding or conclusion is final if it has been finally  
78 determined on appeal to the appropriate court of the state, if all time for filing such an  
79 appeal with respect to the finding or conclusion has expired, or if the finding or conclusion  
80 is not subject to judicial review.

81           4. (1) If the state proceeds with an action brought by a person under subsection 2  
82 of this section, such person shall, subject to the second sentence of this subdivision, receive  
83 at least fifteen percent but not more than twenty-five percent of the proceeds of the action  
84 or settlement of the claim, which includes damages, civil penalties, payments for costs of  
85 compliance and any other economic benefit realized by the government as a result of the  
86 action, depending upon the extent to which the person or such person's counsel  
87 substantially contributed to the prosecution of the action. Where the action is one which  
88 the court finds to be based primarily on disclosures of specification, other than information  
89 provided by the person bringing the action, relating to allegations or transactions  
90 specifically in a criminal, civil, or administrative hearing, or in a legislative or  
91 administrative report, hearing, audit, or investigation, or from the news media, the court  
92 may award such sums as it considers appropriate, but in no case more than ten percent of  
93 the proceeds, taking into account the significance of the information and the role of the  
94 person bringing the action in advancing the case to litigation. Any payment to a person  
95 under the first or second sentence of this subdivision shall be made from the proceeds. Any  
96 such person shall also receive an amount for reasonable expenses which the appropriate

97 state court judge finds to have been necessarily incurred, plus reasonable attorneys' fees  
98 and costs. All such expenses, fees, and costs shall be awarded against the defendant.

99 (2) If the state does not proceed with an action under this section, the person  
100 bringing the action or settling the claim shall receive an amount which the court decides  
101 is reasonable for collecting the civil penalty and damages. The amount shall be not less  
102 than twenty-five percent and not more than thirty percent of the proceeds of the action or  
103 settlement and shall be paid out of such proceeds, which includes damages, civil penalties,  
104 payments for costs of compliance and any other economic benefit realized by the  
105 government as a result of the action. Such person shall also receive an amount for  
106 reasonable expenses which the appropriate state court judge finds to have been necessarily  
107 incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall  
108 be awarded against the defendant.

109 (3) Whether or not the state proceeds with the action, if the court finds that the  
110 action was brought by a person who planned and initiated the violation of section 208.382  
111 upon which the action was brought, then the court may, to the extent the court considers  
112 appropriate, reduce the share of the proceeds of the action which the person would  
113 otherwise receive under subdivisions (1) and (2) of this subsection, taking into account the  
114 role of such person in advancing the case to litigation and any relevant circumstances  
115 pertaining to the violation. If the person bringing the action is convicted of criminal  
116 conduct arising from his or her role of section 208.382, such person shall be dismissed from  
117 the civil action and shall not receive any share of the proceeds of the action. Such dismissal  
118 shall not prejudice the right of the state to continue the action.

119 (4) If the state does not proceed with the action and the person bringing the action  
120 conducts the action, the court may award to the defendant its reasonable attorneys' fees  
121 and expenses if the defendant prevails in the action and the court finds that the claim of  
122 the person bringing the action was clearly frivolous, clearly vexatious, or brought  
123 primarily for purposes of harassment.

124 5. (1) No court shall have jurisdiction over an action brought under subsection 2  
125 of this section against a member of the state legislative branch, a member of the judiciary,  
126 or a senior executive branch official if the action is based on evidence or information known  
127 to the state when the action was brought.

128 (2) In no event may a person bring an action under subsection 2 of this section  
129 which is based upon allegations or transactions which are the subject of a civil suit or an  
130 administrative civil monetary penalty proceeding in which the state is already a party.

131 (3) Upon motion of the state attorney general, the court may, in consideration of  
132 all the equities, dismiss a relator if the elements of the actionable false claims alleged in the

133 *qui tam* complaint have been publicly disclosed specifically in the news media or in a  
134 publicly disseminated governmental report at the time the complaint is filed.

135         **6. The state is not liable for expenses which a person incurs in bringing an action**  
136 **under this section.**

137         **7. Any employee who is discharged, demoted, suspended, threatened, harassed, or**  
138 **in any other manner discriminated against in the terms and conditions of employment by**  
139 **his or her employer because of lawful acts done by the employee on behalf of the employee**  
140 **or others in furtherance of an action under this section, including investigation for,**  
141 **initiation of, testimony for, or assistance in an action filed or to be filed under this section,**  
142 **shall be entitled to all relief necessary to make the employee whole. Such relief shall**  
143 **include reinstatement with the same seniority status such employee would have had but for**  
144 **the discrimination, two times the amount of back pay, interest on the back pay, and**  
145 **compensation for any special damages sustained as a result of the discrimination, including**  
146 **litigation costs and reasonable attorneys' fees. An employee may bring an action in the**  
147 **appropriate court of the state for the relief provided in this subsection.**

**208.386. 1. A civil action under section 208.384 shall not be brought more than ten**  
2 **years after the date on which the violation was committed.**

3         **2. A civil action under section 208.384 may be brought for activity prior to the**  
4 **effective date of sections 208.380 to 208.388 if the limitations period set in subsection 1 of**  
5 **this section has not lapsed.**

6         **3. In any action brought under section 208.384, the state or the *qui tam* plaintiff**  
7 **shall be required to prove all essential elements of the cause of action, including damages,**  
8 **by a preponderance of the evidence.**

9         **4. Notwithstanding any other provision of law, a guilty verdict rendered in a**  
10 **criminal proceeding charging false statements or fraud, whether upon a verdict after trial**  
11 **or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the**  
12 **essential elements of the offense in any action which involves the same transaction as in the**  
13 **criminal proceeding and which is brought under subsection 1, 2, or 3 of section 208.384.**

**208.388. 1. The provisions of sections 208.380 to 208.388 are not exclusive, and the**  
2 **remedies provided for in sections 208.380 to 208.388 shall be in addition to any other**  
3 **remedies provided for in any other law or available under common law.**

4         **2. If any provision of sections 208.380 to 208.388 or the application thereof to any**  
5 **person or circumstance is held to be unconstitutional, the remainder of sections 208.380 to**  
6 **208.388 and the application of the provisions to other persons or circumstances shall not**  
7 **be affected thereby.**

8           **3. Sections 208.380 to 208.388 shall be liberally construed and applied to promote**  
9 **the public interest. Sections 208.380 to 208.388 also adopts the congressional intent behind**  
10 **the federal False Claims Act, 31 U.S.C. Sections 3729-3733, including the legislative history**  
11 **underlying the 1986 amendments to the federal False Claims Act.**

T